

Charts on Capital Prosecutions and Their Outcomes — 1726-1775

Introduction

These charts on capital sentences and their outcomes come from a chart that I started making in the late 1960s following several summers of additional research on the legal history of colonial Maryland at the old Hall of Records in Annapolis after I finished, in 1963, my dissertation on the county courts and the provincial court in Maryland from 1733 through 1763. From about 1970 through the first half of 1975, when I began a long recess from Chesapeake history, I used the original chart in writing two long manuscripts: “Capital Punishments in Eighteenth-Century Maryland” and “Pardons and Reprieves in Eighteenth-Century Maryland.” I also have a short version of the manuscript on pardons and reprieves, which I presented on 22 April 1976 at a two-day conference in Omaha on “Historical Perspectives on American Criminal Justice.” Finally, I have a long manuscript on “Benefit of Clergy in Colonial Maryland,” for which I used the originals of the charts that appear here but that do not come from the master charts.

From the fall of 2008 into the fall of 2009 Beverly Ann entered my original chart onto her computer, by date and by name, and created the sub-charts that she derived from the master charts, from separate charts on pardons and reprieves, and from a separate chart on benefit of clergy.

Probably the first thing we should point out about these charts is that since we could not come up with a title for the master charts that would include everything on them without its becoming very long, we have titled them simply “Capital Crimes: Hangings, Pardons, Reprieves,” by names and by dates, even though the charts include Esther Anderson, who was burned, possibly alive, in Kent County on 16 May 1746. When Esther Anderson appears in our sub-charts or is included in the numbers or percentages, we have noted that she was burned rather than hanged.

The next thing the reader might notice is that we have included no acquittals. At the time I started collecting the information for the charts I was interested in crimes and punishments, and I did not keep track of acquittals. Before the age of computers, when the only way to summarize the information was to put it onto large sheets of graph paper, counting and including acquittals would have taken hundreds of additional hours and would have required another massive chart.

It is true that in eighteenth-century Maryland there were a good many acquittals, but I have no idea of how the total would compare to the number of convictions and death sentences. What I do remember is that while going through the prosecutions in the provincial court I sometimes almost gasped at the number of capital sentences.

A logical next step is for someone to go through the court records and other appropriate records that have survived and count the number of acquittals, which then could be broken down into the categories that we have included here. Anyone who might do this would have to understand that probably the project would take years rather than months, and that, since a good many of the appropriate records have not survived, no matter how much research a person does the comparison of convictions and acquittals can never be exact. This would not be a project for someone who needs, or wants, to get published quickly.

The reader also needs to know that for dates from 1 January through 24 March until September of 1752 we use split dating. Until that September England continued to use the Julian Calendar, which was introduced by Julius Caesar in 46 B. C. and by which the new year began on 25 March,¹ while many of the countries on the European continent were using the Gregorian calendar, which was decreed by Pope Gregory XIII on 24 February 1582 and by which the new year began on 1 January.² Thus until September of 1752, when England adopted the Gregorian Calendar, it was operating under what is called the “Old Style,” while the continental countries were using what is called the “New Style.” January of 1694 in England, for example, was January of 1695 on most of the continent. Thus the split date for 5 January of that year would be 5 January 1694/5.

To make the British calendar conform with the calendar used in most of Europe the parliament not only changed the date on which the new year began but also dropped eleven days from September of 1752. Thus the day after 2 September that year was 14 September. The “loss” of those eleven days allowed demagogues to stir up the crowd to shout “Give us back our eleven days.”³ Seeing the calendar of that short September at <http://www.timeanddate.com/calendar/?year=1752&country=9> helped us to visualize the change much better than we could earlier.

For the vast majority of the research that has resulted in these charts, from the fall of 1961 or the spring of 1962, when I started my dissertation, through the middle of 1975, I used the original records at the old Hall of Records in Annapolis. For my citations, of course, I used the shelf-list as it existed during those years. On that shelf-list split dates were used.

When I finally got back to the State Archives, in 1989 or thereabouts, the records had been moved from the old Hall of Records to the new State Archives

Building. At the time of the move the titles of some of the records were changed and the split dating was abandoned. In the new shelf-lists only the later dates are used. Here we have used the new titles, but we have retained the split dates.

When the volumes of the records have liber numbers or letters, our using split dates should not confuse anyone, since researchers can find the volumes by those numbers or letters. When the libers have no numbers or letters but only dates, the researcher should be able to find our references on the new shelf-list easily enough by looking on the shelf-lists for the dates after the slashes in the dates we use.

We have here two master charts, listing the executions, pardons, and reprieves by names and chronologically. On those charts, from November of 1726 through 1775 we have 267 people who were hanged and one who was burned, 183 people who received pardons after they had been condemned, and twenty-six cases in which the defendants received reprieves after they were condemned and in which we have found no evidence that they were hanged or pardoned later. These charts have been broken down into sub-charts in various categories, including two charts with the twenty-nine gibbetings that I have found and two charts with thirteen quarterings of slaves. The gibbetings occurred from 1723 through 1775, and the quarterings occurred from 1740 through 1776. The quartering from 1776 does not appear on our master charts.

Especially impressive and revealing, to us, at least, are the seven quarterings of slaves that occurred in Annapolis on 28 April 1742 for the murder of the master of five of them. Surely this gruesome event reveals a lot about the society of the time.

We also have here one statistical chart listing only the number of pardons, reprieves, and executions by year from November of 1726 through 1775.

In addition to the master charts and the sub-charts that Beverly Ann derived

from them, we have two charts, by names and by dates, of forty-four people who successfully pleaded benefit of clergy from 1708 through 1778, two charts with eleven people who successfully pleaded benefit of clergy before 1708, and two charts with six people in whose cases the records do not make clear whether or not they pleaded benefit of clergy.

We are also including here nineteen one-page statistical charts on which we make various comparisons on capital sentences and their outcomes, but without any names, and two charts, by names and by dates, of the justices' estimates of the values of ninety-six of the slaves who were sentenced to death from 1727 through 1775.⁴ We have not found the values for the others.

We have proof-read these charts the best we can. We have checked the master charts against our original master chart and against two original charts on pardons and reprieves. The charts on gibbeting and on quartering we have also checked against our original charts on quartering and on gibbeting, and the charts on benefit of clergy we have checked both against the original charts on benefit of clergy and against the cards that we have for them. The charts on statistics we have checked many times against our original master chart. We expect, of course, that the charts will still have some errors that we have not found.

Several times on the charts we have used the word "culprit." Since the main definition of that word is "One accused or charged with commission of a crime," even though it is "commonly used to mean one guilty of a crime or fault,"⁵ our use of that term should in no way imply that the defendants were guilty, even if they had confessed. We must be as suspicious of prosecutions and convictions in the colonial period as we should be in our own lifetimes.⁶

In collecting the information for these charts and getting them on the web, we

owe thanks to a number of people.

I thank Harold Ehrentreu, now an attorney in Queens, New York, who when he was a student at Cortland copied my notes on capital punishments in colonial Maryland onto forms that made it easier for me to enter the items on the master chart.

I thank the Research Foundation of the State University of New York for Summer Research Fellowships for research at the old Hall of Records in Annapolis during the summers of 1964, 1967, and 1971, for research in England during the summer of 1968, and to work in Cortland during the summer of 1973 on my manuscript on crimes and punishments, which has morphed into several manuscripts, and to go through the photocopies of the relevant Colonial Office Papers. I thank Ms. Eileen O'Donnell for her courtesy and efficiency in getting these photocopies for me from the Library of Congress through Interlibrary Loan.

Of course we are especially grateful to Dr. Edward C. Papenfuse, the Maryland State Archivist and Commissioner of Land Patents, and Dr. Jean Russo, Research Archivist and Associate General Editor of the Archives of Maryland Online, not only for their help through the years but also for encouraging us to put these charts on their website. We thank Dr. Russo also for reading this Introduction and for her suggestions for improving it. The archivists at the old Hall of Records who helped me during the years after the mid- or late sixties while I was collecting the information for the charts also deserve, and have, my gratitude.

Finally, I thank Beverly Ann for her skill and her many hours of work in putting my original charts onto her computer and so on mine and also for the hours she spent proof-reading and making the appropriate changes in all of the many copies of the charts. I also thank her for her patience with my deficiencies in the use of computers as well as for her advice and challenges over the years since we discovered each other

after I walked into a chair at the old Hall of Records.

¹ For the Julian Calendar, see Jerome Carcopino, *Daily Life in Ancient Rome: The People and the City at the Height of the Empire* (edited by Henry T. Rowell; New Haven: Yale University Press, 1940), p. 143; Robert Payne, *Ancient Rome* (New York: American Heritage Press, 1970), pp. 146-147; F. R. Cowell, *Life in Ancient Rome* (Perigee edition; New York: G. P. Putnam's Sons, 1980), 185-189.

² For the Gregorian Calendar, see <http://www.webexhibits.org/calendars/year-history.html>; *Oxford English Dictionary*, under Gregorian, definition 2.

For Great Britain's adoption of the Gregorian Calendar, see Basil Williams, *The Whig Supremacy, 1714-1760* (2nd edition; revised by C. H. Stuart; Oxford: The Clarendon Press, 1962), pp. 380-381.

³ *Ibid.*; Samuel Shellabarger, *Lord Chesterfield and His World* (Boston: Little, Brown and Company, 1951), p. 260; Derek Jarrett, *England in the Age of Hogarth* (New Haven: Yale University Press, 1986; first published 1974), p. 25; Roy Porter, *English Society in the Eighteenth Century* (New York: Viking Penguin Inc., 1982), pp. 291, 294-295.

⁴ In 1717 the assembly of Maryland provided that the owner of a slave who was executed would receive three-fourths of the value of the slave as established by the justices who condemned him. 1717, c. 13, *Md. Arch.*, XXXIII, 112. In 1751 the assembly provided that the master would receive the full value of the slave. 1751, c. 14, *Md. Arch.*, XLVI, 619.

⁵ Henry Campbell Black, *Black's Law Dictionary: Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern* (6th edition: St. Paul: West Publishing Co., 1990), p. 379.

⁶ See Death Penalty Information Center on exonerations of people who have been sentenced to death in the United States at <http://www.deathpenaltyinfo.org/innocence-and-death-penalty>.

C. Ashley Ellefson
Cortland, New York
October 2009 - January 2010